

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

On October 15, 2008, the court declined to rule on NextG Networks, Inc's ("NextG") anti-SLAPP motion against NewPath Networks, LLC ("NewPath"). Doc #40 at 12-14. The anti-SLAPP motion was directed at NewPath's counterclaims of tortious interference with a contractual relationship, negligent interference with a business expectancy and unfair competition. Id. The court dismissed these counterclaims because they were based on allegations of privileged conduct, but NewPath was granted leave to amend its countercomplaint not later than October 31, 2008. Id at 16.

1 motion given that NewPath did not amend its countercomplaint,
2 directed the parties to file a status update on the issue. Doc
3 #42.

4 On November 17, 2008, NextG filed a statement indicating
5 its position that the court should simply grant the anti-SLAPP
6 motion. Doc #44 at 4. On November 24, 2008, NewPath filed a
7 statement arguing that the anti-SLAPP motion should be denied or
8 deferred until the end of the case when it can be considered with
9 other attorney fee motions. Doc #45 at 4. Although NewPath
10 somewhat mischaracterized the court's earlier ruling on the anti-
11 SLAPP motion — the court did not hold that the state-law claims
12 were supported by evidence that would survive an anti-SLAPP motion,
13 but rather noted that NewPath *might* be able to present sufficient
14 evidence to defeat a motion, see Doc #45 at 3, Doc #40 at 14 —
15 NewPath is correct that its decision not to amend its
16 countercomplaint is not an admission that those abandoned claims
17 are unsupported. Doc #45.

18 Given the court's and the parties' interest in proceeding
19 to the merits of this case, the latter course of action suggested
20 by NewPath is appropriate. Accordingly, the court DECLINES TO RULE
21 on the anti-SLAPP motion until the case is resolved on the merits.
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23 IT IS SO ORDERED.

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26 VAUGHN R WALKER
27 United States District Chief Judge
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